

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**P. KRISTEN BENNETT, as the personal  
representative of the Estate of Steven G.  
Gundersen,  
3711 Kennett Pike, Suite 100  
Wilmington, DE 19807,  
Plaintiff,**

**v.**

**MPOWERD, INC.  
240 Kent Avenue, Suite B18A  
Brooklyn, NY 11249,  
Defendant.**

**CIVIL ACTION NO. \_\_\_\_\_**

**COMPLAINT**

1. Plaintiff P. KRISTEN BENNETT (“Plaintiff”), as the personal representative of the Estate of Steven G. Gundersen (“Estate”), by her undersigned counsel, brings this action against Defendant MPOWERD, INC. (“MPOWERD” or “Defendant”) for failing to repay a July 1, 2014 Promissory Note (“Note”) made payable to Mr. Gunderson. Despite demand from Plaintiff, and notwithstanding MPOWERD’s acknowledgement of this debt in its financial statements, MPOWERD has refused to pay off the Note in full and as a result owes Plaintiff \$236,852.60, plus interest and attorneys’ fees.

**THE PARTIES**

2. Plaintiff is the personal representative of the Estate of Steven G. Gundersen (“Estate”). Ms. Bennett is a citizen of the State of Delaware with an address of 3711 Kennett Pike, Suite 100, Wilmington, DE 19807. The Estate is the successor-in-interest to Steven G. Gunderson (“Gundersen”). Prior to his death, Gunderson maintained a residence in the State of Delaware.

3. MPOWERD is a New York domestic benefit corporation with its principal place of business located at 240 Kent Avenue, Suite B18A, Brooklyn, NY 11249.

### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this diversity matter pursuant to 28 U.S.C. Section 1332(a) as the amount in controversy exceeds \$75,000 and the citizenship of the Plaintiff differs from the citizenship of the Defendant.

5. Venue is appropriate in the Southern District of New York pursuant to 28 U.S.C. Section 1391(b) as a substantial part of the events or omissions giving rise to the claims at issue occurred in this District.

### **FACTS**

6. On July 1, 2014, MPOWERD entered into a Promissory Note (the “Note”) made payable to Mr. Gunderson. Attached hereto as **Exhibit A** is a true and correct copy of the Note.

7. The principal amount of the Note was \$250,000.00. The Note bore an interest rate of 6.00% and a default interest rate of 9.00%.

8. Under the terms of the Note, MPOWERD was required to make monthly principal payments of \$2,500.00, in addition to monthly interest payments on the outstanding balance, beginning on July 31, 2014 and continuing through June 30, 2017.

9. The Note further required MPOWERD to pay the remaining balance of \$160,000.00 on July 1, 2017.

10. The Note also provided that should a proceeding be commenced to enforce the Note, the prevailing party shall be entitled to repayment of all costs and attorneys’ fees in connection with such proceeding.

11. MPOWERD made the monthly payments due under the Note through June 30, 2017.

12. MPOWERD, however, failed to pay the remaining balance of \$160,000.00 due on July 1, 2017.

13. Despite multiple demands, MPOWERD has failed to make any payments subsequent on the Note.

14. MPOWERD's Audited Financial Statements reflect the \$160,000.00 principal balance due on the Note. A true and correct partially redacted copy of MPOWERD's Financial Statements for December 31, 2020 is attached hereto as **Exhibit B**.

15. MPOWERD owes default interest on the Note from July 1, 2017 through October 31, 2022 equal to \$76,852.60.

16. On August 11, 2022, Plaintiff sent a demand letter to MPOWERD detailing the then current balance of the debt in the amount of \$233,200.00. Attached hereto as **Exhibit C** is a true and correct copy of the demand letter.

17. To date, MPOWERD has not disputed or contested the amount due on the Note or in the demand letter.

#### **CLAIM I: BREACH OF CONTRACT**

18. Plaintiff repeats and realleges paragraphs 1 through 17 above of this Complaint as if set forth fully herein.

19. MPOWERD entered into a contractual agreement to pay the Note.

20. MPOWERD breached its contract under the Note by failing to pay off the balance of the Note on July 1, 2017 or at any time thereafter.

21. Plaintiff has been injured as proximate result of MPOWERD's breach of contract.

22. MPOWERD is bound by its obligation under the Note to pay Plaintiff the principal balance, interest due on the Note, Plaintiff's costs and reasonable attorneys' fees.

**CLAIM II: COMPLAINT ON ACCOUNT**

23. Plaintiff repeats and realleges the foregoing paragraphs 1 through 22 of this Complaint as if set forth fully herein.

24. The Promissory Note, the principal amount due, the repayment plan agreed to therein and the aforementioned course of conduct constitute a valid and enforceable agreement related to the account between the parties, (together, the "Account").

25. Despite demand, MPOWERD has failed and/or refused to tender any further payment to Plaintiff in breach of the parties' agreement on the Account.

26. Pursuant to the terms of the Note, MPOWERD owes 9.0% annual interest on the balance on the Note that remains unpaid.

27. Pursuant to the Note, MPOWERD owes Plaintiff's attorneys' fees in connection with Plaintiff's efforts to enforce the Note.

28. As a result of the foregoing, Plaintiff has sustained damages and is entitled to payment on the Account, as well as actual, incidental and consequential damages herein detailed.

**COUNT THREE: ACCOUNT STATED**

29. Plaintiff repeats and realleges the foregoing paragraphs 1 through 28 of this Complaint as if set forth fully herein.

30. The Note and the August 11, 2022 demand letter set forth the charges and amounts due on MPOWERD's Account.

31. MPOWERD received these statements without timely protest and neither objected to them nor indicated that they were erroneous.

32. MPOWERD's financial statements reflect the debt due on the Note.

33. Plaintiff seeks damages from the Defendant for the account stated balance plus statutory interest as allowed by law.

**REQUEST FOR RELIEF**

WHEREFORE, on each Count, the Plaintiff claims from MPOWERD:

- a. Money damages pursuant to the account stated in the sum of \$236,852.60 plus interest from October 31, 2022;
- b. Attorneys' fees; and
- c. Such other relief as is just and proper.

Dated: New York, New York  
December 14, 2022

**Montgomery McCracken Walker & Rhoads LLP**  
*Attorneys for P. Kristen Bennett*

By: 

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